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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 SYLVIA AHN, as daughter and) Case No. 1:22-cv-00586-JLT-BAK
on behalf of the Estate of)
11 Choung Woong Ahn,) DEFENDANT GEO GROUP, INC'S
12 Plaintiff,) MOTION TO DISMISS COUNT SEVEN;
13 v.) MEMORANDUM OF POINTS AND
14) AUTHORITIES
15)
16)
17)
18 Defendants.)

1 **DEFENDANT'S MOTION TO DISMISS COUNT SEVEN AND EIGHT OF PLAINTIFF'S**
2 **COMPLAINT**

3 Defendant GEO GROUP, INC. ("Defendant") by and through their undersigned counsel,
4 pursuant to Fed. R. Civ. P. 8(a), 10(b) and 12(b)(6) hereby moves to dismiss the claims set forth in
5 Plaintiff SYLVIA AHN, as daughter and on behalf of the Estate of Choung Woong Ahn, ("Plaintiff")
6 Complaint on the following grounds:

7 1. The Seventh Cause of Action for alleged violation of Cal. Civil Code §43, Cal. Civil
8 Code §51 ("Unruh Civil Rights Act").

9 2. The Eighth Cause of Action for alleged Violation of Cal. Civil Code §52.1 1
10 ("California Bane Act") for failure to state facts sufficient to constitute a cause of action.

11 WHEREFORE, in light of the foregoing, and as more fully explained below, Defendant
12 respectfully requests that this honorable Court grant their Motion to Dismiss Count seven and Count
13 eight against Defendant in the Complaint.

14
15 DATED: June 9, 2022

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff SYLVIA AHN, as daughter and on behalf of the Estate of Choung Woong Ahn, (“Plaintiff”) Complaint failed to allege that GEO GROUP, INC. (“Defendant”) violated Cal. Civil Code § 43, Cal. Civil Code § 51 (“Unruh Civil Rights Act”) and Cal. Civil Code § 52.1 (“California Bane Act”).

II. STATEMENT OF FACTS ALLEGED BY PLAINTIFF

8 Plaintiff is the daughter of seventy four year old decedent, Choung Woong Ahn
9 (“Detainee”). Compl. ¶ 2, 12. Detainee was born in South Korea and entered the United States in
10 1988 as a lawful Permanent Resident and resided in San Francisco until the time of his arrest.
11 Detainee was confined to state prison for years. *Id.* ¶14.

12 Detainee came to the attention of Immigration and Customs Enforcement (“ICE”) pursuant
13 to his incarceration at the California State Prison Salon (“CSP”). On or about February 21, 2020,
14 ICE arrested Detainee at CSP and took Detainee into their civil custody and was transported to Mesa
15 Verde ICE processing Center (“Mesa Verde”). *Id.* ¶15. Plaintiff alleged Defendant City of
16 McFarland, California hired and entered into a service agreement with GEO Group for immigration
17 detention services at Mesa Verde¹. *Id.* ¶7.

18 On March 12, 2020, while at Mesa Verde, Detainee reported he was experiencing shortness
19 of breath and chest pain. *Id.* ¶20. Detainee was treated by Third Party Defendant, Wellpath.
20 Wellpath contracted with GEO Group to provide on-site medical care to Detainees including Ahn.
21 *Id.* ¶48. After evaluation, Wellpath requested Detainee be transferred for outside medical facility.
22 Detainee was admitted to the emergency department of Mercy Hospital in Bakersfield, California.
23 *Id.* ¶20. Detainee received emergency surgery to remove a mass on his lung. During this time,
24 Detainee was distressed and believed he had been diagnosed with lung cancer. *Id.* ¶ 21.

On May 14, 2020 Detainee returned to Mesa Verde after receiving a negative COVID -19

¹ Although it is alleged, that the Defendant City of McFarland, California hired GEO Group for immigration detention services at Mesa Verde, it was ICE who contracted directly with the Defendant, GEO Group to provide detention services.

1 test and was placed in isolation after spending two days in the emergency department during the
2 pandemic. *Id.* ¶ 32. He was segregated to avoid community spread during the height of the pandemic
3 and prior to the availability of vaccinations.

4 On May 17, 2020 Detainee committed suicide by hanging himself with a bedsheet. *Id.* ¶ 51.

5 **III. THE COMPLAINT FAILS TO PLEAD ANY VIABLE CLAIM ESTABLISHING**
6 **THAT DEFENDANT VIOLATED CAL. CIVIL CODE § 43, CAL. CIVIL CODE § 51**
7 **(UNRUH) AND CAL. CIVIL CODE § 52.1 (BANE ACT).**

8 To survive a motion to dismiss, the pleading must establish a "plausible" right to relief.
9 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also* Fed. R. Civ. P. 8(a). To survive a motion to
10 dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true,
11 to state a claim for relief that is plausible on its face." *Iqbal*, 556 U.S. at 678. While a complaint
12 "does not need detailed factual allegations," it must provide "more than labels and conclusions" or
13 "a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S.
14 544, 555 (2007).

15 Plaintiff has failed to establish a plausible right to relief under both Cal. Civil Code § 43,
16 Cal. Civil Code § 51 (Unruh Civil Rights Act) and Cal. Civil Code § 52.1 (California Bane Act).

17

18 **A. Plaintiff Has Not Properly Pled A Violation of Cal. Civ. Code § 51.**

19 The Unruh Civil Rights Act (hereinafter, "The Unruh Act"), provides that "[a]ll persons
20 within the jurisdiction of [California] are free and equal, and no matter what their ... disability [or]
21 medical condition ... are entitled to the full and equal accommodations, advantages, facilities,
22 privileges, or services in all business establishments of every kind whatsoever. Cal. Civ. Code § 51.

23 A plaintiff alleging a violation of the Unruh Act must show the following (1) [plaintiff] was
24 denied the full and equal accommodations, advantages, facilities, privileges, or services in a business
25 establishment; (2) [plaintiff's] disability was a motivating factor for this denial; (3) defendants
26 denied plaintiff the full and equal accommodations, advantages, facilities, privileges, or services;
27 and (4) defendants' wrongful conduct caused plaintiff to suffer injury, damage, loss or harm.

28 *Johnson v. Beahm*, No. 2:11-cv-0294-MCE-JFM, 2011 WL 5508893, at *4 (E.D.Cal. Nov. 8,

1 2011).

2 In short, Plaintiff's Unruh Act claim should be dismissed because (1) Defendant is not a
3 business establishment and there was no customer-proprietorship relationship and (2) Detainee was
4 not denied accommodations because of any alleged disability. *See Delta Sav. Bank v. U.S.*, 265 F.3d
5 1017, 1025 (9th Cir. 2001).

6 **1. Defendant does not qualify as a business establishment**

7 The Ninth Circuit has confirmed that in determining whether an organization qualifies as a
8 "business establishment" under the Unruh Act, the focus of the inquiry must be the relationship
9 between plaintiff and defendant. *Id.* at 1025. ("[Unruh Act] has been limited to cases "where the
10 plaintiff was in a relationship with the offending organization similar to that of the customer in the
11 customer-proprietor relationship."); *see also Strother v. S. Cal. Permanente Med. Group*, 79 F.3d
12 859, 873–74 (9th Cir. 1996)(“The Unruh Act claims [are] appropriate where the plaintiff was in a
13 relationship with the offending organization similar to that of the customer in the customer-
14 proprietor relationship which the Act and its predecessors have most commonly covered”").

15 In addition, “the word ‘business’ embraces everything about which one can be employed
16 and it is often synonymous with calling, occupation or trade, engaged in for the purpose of making
17 a likelihood or gain. *O'Connor v. Village Green Owners Assoc.*, 33 Cal.3d 790, 795, 191 Cal.Rptr.
18 320, 662 P.2d 427 (1983). According to *O'Connor* and the California Court of Appeal’s
19 interpretation of section 51 “a prison does not qualify as a “business” because prisoners are not
20 engaged in a calling, occupation or trade for purposes of making a livelihood or gain.” *Taormina v.*
21 *Cal. Dep’t of Corrs.*, 946 F. Supp. 829, 834 (S.D. Cal. 1996)(citing *O'Connor*, 33 Cal.3d at 795). .
22 “Rather, [prisoners] are incarcerated by the state because of crimes which they have committed. *Id.*
23 (holding the Unruh Act does not apply to correctional facilities); *Estate of Mejia v. Archambeault*,
24 2021 WL 4428990 *8 (S.D. Cal. Sept. 27, 2021)(“although the Court recognizes that [Defendant]
25 is not a state jail or prison, the Court notes that other courts have consistently held that state jails
26 and prisons are not “business establishments” under the Unruh Act”).

27 Pleading “a private operator of federal detention centers, qualifies as a business
28 establishment under the Unruh Act is unpersuasive.” *Id.* at *8. In the present case, Plaintiff relies

1 on *Wilkins-Jones v. Cty. of Alameda*, the exact case the Southern District identified as a non-binding
2 case involving a private contractor. *Id.* (“*Wilkins-Jones* court emphasized that the private contractor
3 at bar was ‘qualitatively different from a correctional facility itself’”).

4 Identical to *Estate of Mejia*, Defendant is also a private operator of correctional facilities and
5 thus is distinguishable from *Wilkins-Jones* non-binding case law involving a private contractor. *Id.*
6 at *8. Defendant requests the court to rule in line with the Southern District of California that
7 “[a]bsent legislation or clear interpretation from the Ninth Circuit, the Court cannot embrace
8 Plaintiffs’ novel interpretation of the Unruh Act.” *Id.*

9 **2. Detainee was not denied accommodations because of any alleged**
10 **disability.**

11 Plaintiff further alleges Detainee was denied accommodations because of his mental health.
12 On March 12, 2020 Detainee was admitted to Mercy Hospital in Bakersfield due to chest pain and
13 struggling to breathe. Compl. ¶31, 34. Once Detainee returned on May 14, 2020 he was placed in
14 medical isolation because of his low immunity and high number of positive COVID 19 cases not
15 because of any alleged disabilities. *Id.* at ¶ 34. Plaintiff fails to present any evidence to state a claim
16 of relief that Detainee was denied accommodations because of his alleged disability of depression,
17 anxiety, and other mental illnesses. *Id.* at ¶ 145.

18 In essence, Defendant requests the Court to dismiss Count Seven for a failure to adequately
19 plead claim under the Unruh Act.

20
21 **B. Plaintiff Has Not Properly Pled A Violation of Cal. Civ. Code § 52.1**

22 The Tom Bane Civil Rights Act (“ Bane Act”) provides for civil actions against those who
23 interfere or attempt to interfere “by threat, intimidation, or coercion, with the exercise or enjoyment
24 by any individual or individuals of rights secured by” the Constitution or laws of the United States
25 or the State of California. Civ. Code, § 52.1(b); *see Shoyoye v. County of Los Angeles*, 137 Cal.
26 Rptr. 3d 839, 955, 959 (Cal. App. 2d Dist. 2012) (held “[t]he essence of a Bane Act claim is that the
27 defendant, by the specified improper means, (i.e., threats, intimidation or coercion), tried to or did
28 prevent the plaintiff from doing something he or she had the right to do under the law or to force the

1 plaintiff to do something that he or she was not required to do under the law); *see also Reese v. Cnty.*
2 *of Sacramento*, 888 F.3d 1030, 1040, 1043 (9th Cir. 2018)(held the Bane Act was originally enacted
3 in 1987 to address hate crimes). In other words, the apparent purpose of the Bane Act is not to
4 provide relief brought about by human error rather than intentional conduct. *Shoyoye*, 137 Cal. Rptr.
5 3d at 959. Legislature meant the Act to address interference with constitutional rights involving
6 more egregious conduct than mere negligence, even assuming *arguendo* there was any negligence
7 on the part of GEO Group, which is expressly denied.. *Id.* at 958.

8 The Act imposes an additional requirement beyond a finding of a constitutional violation.
9 *Reese*, 888 F.3d 1043. “[T]hreat, intimidation or coercion serves as an aggravator justifying the
10 conclusion that the underlying violation of rights is sufficiently egregious to warrant enhanced
11 statutory remedies, beyond tort relief.” *Cornell v. City and Cnty. of San Francisco*, 17 Cal. App. 5th
12 766, 225, Cal. Rptr. 3d 356, 383 (2017)(case cited in *Reese*, 888 F.3d at 1043). The Ninth Circuit
13 has held the specific intent requirement articulated in *Cornell* is consistent with the language of §
14 52.1. *Reese*, 888 F.3d at 1043. Accordingly, *Cornell* held the egregiousness required by § 52.1 is
15 tested by whether the circumstances indicate Defendant had a specific intent to violate the
16 Detainee’s rights. *Id.* at 1044.

17 *Cornell* adopted the specific intent standard established in *Screws v. U.S.*, 325 U.S. 91, 65
18 S.Ct. 1031, 89 L.Ed. 1495 (1945), for assessing criminal violations of federal civil rights. This test
19 essentially sets forth two requirements for a finding of “specific intent.” *Cornell*, 17 Cal. App. 5th at
20 803. The first is a purely legal determination, (1) “Is the right at issue clearly delineated and plainly
21 applicable under the circumstances of the case?” *Id.* If the trial judge concludes that it is, then the
22 jury must make the second, factual, determination. (2) “Did the defendant commit the act in question
23 with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected
24 by that right?” *Id.* The act of interference with a constitutional right must be deliberate or spiteful.
25 *Shoyoye*, 137 Cal. Rptr. 3d at 849.

26 Here, Plaintiff pleads no evidence of any specific intent to violate the Detainee’s rights nor
27 any evidence of interference being deliberate or spiteful. On May 14, 2020 Mesa Verde moved
28 Detainee to Medical Isolation after returning from the hospital in midst of a pandemic. Compl. ¶155.

1 Plaintiff fails to properly plead that the decision was committed for the particular purpose of
2 depriving Detainee of his enjoyment of right. Placing Detainee with other Detainees while already
3 showing symptoms of poor immunity could have worsen his conditions.

4 Furthermore, there is no evidence in the Complaint Defendant threatened or attempted to
5 intimidate Detainee, nor is there evidence that Detainee was treated differently than other Detainees,
6 or that any conduct directed at him was to interfere with his constitutional rights.

7 In essence, the Eastern District of California has recognized that there are two distinct
8 elements for a section 52.1 cause of action: (1) intentional interference or attempted interference
9 with a state or federal constitutional or legal right, and (2) the interference or attempted interference
10 was by threats, intimidation or coercion. *Warren v. Mgt. and Training Corp.*, 2016 WL 8730711 at
11 *4 (E.D. Cal. Aug. 5, 2016). In sum, Plaintiff has failed to establish a cause of action for both
12 elements under section 52.1.

13

14 **IV. CONCLUSION**

15 The Complaint's attempt to state a violation of Cal. Civil Code § 43, Cal. Civil Code § 51
16 (UNRUH) and Cal. Civil Code § 52.1 (Bane Act) fails as a matter of law. Defendants respectfully
17 request the court grant Defendant's Motion to Dismiss Count Seven and Eight of Plaintiff's
18 Complaint.

19 DATED: June 9, 2022

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